IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 619 of 2000

in

SPECIAL CIVIL APPLICATIONNo 9120 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHANDULAL M.MACHHI.SINCE DECEASED THROUGH HEIR & L.R.

Versus

STATE OF GUJARAT

Appearance:

MS L C Nainani for Ms. RANI ADVANI for Appellants
Mr V M Pancholi, AGP for Respondent No. 1, 4
NOTICE SERVED for Respondent No. 2
MR DN PANDYA for Respondent No. 3

CORAM : MR.JUSTICE J.N.BHATT
and

MR.JUSTICE D.P.BUCH

Date of decision: 26/12/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

Since upon joint request, this Letters Patent Appeal is peremptorily fixed for final hearing, it has been taken up and after hearing the learned Advocates appearing for the parties and considering the peculiar facts and special circumstances, obtainable on the record of the present case, and the celebrated doctrine of liberal interpretation which advances causes of justice and not to retard it, we are of the clear opinion that the order of the Government in rejecting the claim of original petitioner, since deceased, by heirs, is unjust, unreasonable, arbitrary and running diametrically counter to the avowed and pronounced policy of the respondents with regard to the grant of pension and the principles of Welfare State. The impugned order of the respondent authority dated 24.2.1992, placed at Annexure 'B' in Special Civil Application No.9120/93, and the subsequent order of the learned Single Judge dated 4.4.2000, in upholding the first impugned order of the respondent, in our opinion, requires to be quashed and set aside, for the reasons we hasten to articulate hereinbelow.

2. The original petitioner, one C M Machhi, who was working as a Peon, in he Sarvajanik High School, Sinor, in Baroda District, tendered his resignation on 13.6.1971, after having continuously worked in the capacity as a Peon, for a spell of 21 years, 3 months and 6 days. Since there was no Government Resolution or any decision, order, or rule provision for voluntary retirement from the service, the original petitioner had tendered his resignation from the services.

3. Subsequently, by a Resolution dated 21.12.1971, the respondent authority introduced the pension scheme with all other resultant attendant benefits to all the teaching and non-teaching staff of recognised and aided non-Government Secondary Schools in the State of Gujarat, as a part of Welfare State Policy, giving effect of the said Resolution from 1.4.1969. The original petitioner, the appellant herein, was never informed by the Institution as per his case. It was also pleaded before the authority concerned by the original petitioner that it was the duty of the employer to inform the employee

regarding the pensionary benefits available to the original petitioner, pursuant to the scheme of the Government, in the light of the Resolution dated 21.12.1971, which was made applicable retrospectively as stated hereinabove.

4. The original petitioner, having come to know about such a scheme and outcome of the aforesaid Resolution through newspapers and also of another teacher, who had succeeded in a similar situation, by filing writ petition on the same ground, was permitted to move the Government for the claim and benefit of pension by giving an application dated 18.11.1991, which, upon consideration by the respondent authority, came to be turned down by its decision communicated to the original petitioner dated 20.4.1992. The claim of the petitioner came to be rejected solely on the ground that the pension scheme was not available to him only on the ground that he had voluntarily resigned from the service.

5. Being aggrieved by the rejection of the claim made in the application, the original petitioner, who was working as Peon, all through out his life, and who was indigent and a person coming from the lower strata of the society, who was also illiterate, had moved an application for legal assistance to the Gujarat State Legal Services Authority, whose application came to be sanctioned by the High Court Legal Services Committee and a petition under Article 226 of the Constitution of India, advancing his claim for pension, pursuant to the aforesaid Government Resolution, being Special Civil Application No.9120/93, came to be filed in this Court.

6. The learned Single Judge was pleased to issue the notice on 30.11.1993 and despite almost a passage of 2 years period, no reply came to be filed by the Government, as a result of which, a detailed order was passed by this Court, in the said petition, by the learned Single Judge. Again, an opportunity was granted to the respondent authority through its Chief Secretary, for filing reply by giving further four weeks' time to comply with the order dated 12.7.1995. This order was passed on 23.8.1995.

7. The writ petition was adjourned thereafter from 7.9.1995 to 22.9.1995. It is the contention on behalf of the appellant-original petitioner that due to the mistake of the Registry, the matter appeared in the specially notified board on 7.9.1995 instead of 22.9.1995 and the appellant's Advocate, duly appointed under the scheme of the Legal Aid, was not aware of the special board, and as

a result of which, in fact, he could not remain physically present in the court on that day, the matter was heard on merits. Thus, in absence of the appellant's Advocate, the petition came to be dismissed on the ground that the appellant-original petitioner employee was not entitled to pension and that there was no explanation for delay of 22 years in filing the petition.

8. Thereafter, the writ petition, as originally was notified, came up again on the proper date for hearing on 22.9.1995. For the first time the appellant's appointed Advocate came to know that the writ petition had already been dismissed and as a result of which, a note was immediately filed explaining the facts and reasons, which led to the passing of the order on 10.4.1995 directing the office to place the matter along with the board of 7.9.1995 of this court. The petitioner, therefore, filed Misc.Civil Application No.688/96 for review of the order of the learned Single Judge passed on 7.9.1995, whereby, the petition came to be dismissed. The review application also came to be dismissed on 4.4.2000 by the learned Single Judge. Being aggrieved by the order of the dismissal of the writ petition and rejection of the subsequent review application, the original petitioner has now come up before us in this Letters Patent Appeal, invoking provisions of Clause 15 of the Letters Patent. We have heard the learned Advocates for the parties as stated hereinabove.

9. Following aspects and facets emerging from the record which have remained uncontrovertible, may, first, be highlighted with a view to appreciate the merits of the appeal and the challenge therein:

i. The appellant, who is referred to as the original petitioner, had worked as Peon in the Sarvajanik High School, Sinor, Baroda District, (for brevity and convenience, "School"), totally for a period of 21 years, 3 months and 6 days.

ii. He had resigned (and not retired) from the service on 13.6.1971.

iii. The Government Resolution dated 21.12.1971, which is referred to earlier, is given retrospective effect for the purpose of pensionary benefits from 1.4.1969.

iv. We have found that there is nothing on

record to show that the said scheme contained in the aforesaid G.R. was communicated to the original petitioner. It is also not anywhere stated that such a scheme was communicated, apart from that there is no material which would spell out even such an inference be drawn against the petitioner.

v. It is not in dispute that the original petitioner, after filing the appeal, whose life came to be cut-short at the ends of the providence, was semi-literate and illiterate for the practical purposes, and obviously, he would not be able to distinguish and comprehend the difference and distinction between the expression "resignation" and "voluntary retirement".

It appears therefore, that without realizing the actual ramification and implication, he had tendered voluntary resignation on 13.6.1971. Again, it is not also in dispute that at the relevant point of time when the resignation was tendered by the original petitioner, there was no scheme prevalent for voluntary retirement, which came to be subsequently introduced on 21.12.1971 giving retrospective effect from 1.4.1969. The purpose, design, decideratum of the issuance of such a resolution by the Government, is clearly and elaborately highlighted in itself. It, therefore, cannot be gainsaid that the ultimate object and purpose is to provide pensionary benefits to the persons, who left service and, who retired from the service on or after 1.4.1969. The petitioner could not avail this benefit because he was not in know of the scheme articulated in the said GR which is beneficiary and benevolent and more compatible and inconsonance with the Welfare State Policy avowed by the State.

10. The only ground on which the request made by the original petitioner by his application dated 18.11.1991 came to be turned down is that he had tendered his resignation and he was not retired. Needless to state that the connotation of expression "retirement" has variety of shades and interpretation of the department in treating the quitting of service by the original petitioner as "resigned" and not "retired", does not go hand-in-gloves with the pension policy and the principles of Welfare State, to which the State has avowed and the same have been highlighted in the Government Resolution.

Again we cannot resist temptation of mentioning at this juncture that the pension is not a charity, it is not a grace, it is not an obligation of master on the servant, but has held in host of judicial pronouncement that it is a right of the employee, subject to the fulfilment of eligibility criteria for claim of pension. It is, therefore, the duty of the master, much less, the model master, to pay pension to the eligible employees, as and when he answers the criteria. Substantive object of the pensionary scheme is to provide pension to the employee as of right, whether one has applied in time or whether one has delayed in claiming it, etc. would fall insignificant, as it belong to processual part and not substantial right.

11. It is amply manifested from the record of the present case and which is as such, no longer in controversy that the date on which the original petitioner tendered his resignation on 13.6.1971, after having successfully put in 21 years, 3 months and 6 days as a peon, as there was no voluntary retirement scheme, which came to be introduced for the first time, by the Government, by its Resolution dated 21.12.1971. Again the said Resolution itself stipulates that it shall be retrospectively, applicable to the cases from 1.4.1969. The petitioner had resigned on 13.6.1971 from the service. Therefore, the period stated in the Government Resolution is covered.

12. Now the only question which emerges for our appreciation, determination and adjudication at this juncture, is as to whether non-mentioning of the words and expression "voluntary retirement" and instead mention of "resignation" in the letter dated 13.5.1971 by the original petitioner, who was working as Peon, and that too in absence of a specific provision for voluntary retirement scheme, could be deprived of the pensionary benefits emerging from the Government Resolution dated 21.12.1971 on a hyper technical or pedantic interpretation ? Apart from the liberal interpretation of benevolent provision in favour of the subjects and that too in case of pension, in our opinion, the original petitioner factually and legally, is wrongfully denied his right to claim pension of a scheme emerging from the G.R. dated 21.12.1971 by the respondent authority and with due respect wrongly confirmed by the learned Single Judge. It was also noticed by us that on account of the mistake of the registry, the petition was notified on a date other than which was earlier granted. Apart from that the order rejecting the review application made by the original petitioner for reconsideration of the

rejection of the substantive petition by the learned Single Judge, in our opinion, could not be sustained.

13. After having taken into account the over-all factual scenario emerging from the record of the present case, the chronical catalogue of facts and dates, the status and background of the original petitioner, who, undoubtedly, belonged to the poor strata, who was semi-literate and after appreciating the correct interpretation of the Government Resolution, and the meaning and benevolent principles of the grant of pension and the underlined design and object of the G.R. dated 21.12.1971, the denial of the rights of the original petitioner since he had completed the qualifying service of more than 20 years and rejection of his request by the respondent authority and confirmed by the learned Single Judge, has been unjust, unreasonable and requiring our interference in exercise of our powers under Clause 15 of the Letters Patent. It is, therefore, very clear, in our mind, that the original petitioner-appellant herein, is entitled to the benefit of pension in view of the Government Resolution dated 21.12.1971. Now the question which requires further consideration is as to from which date the original petitioner actually should be granted such benefits. The original petitioner, on having come to know from newspapers and the grant of such pensionary benefits to one of such peons and persons, he applied to the Government, on 18.11.1991, which came to be turned down on 24.2.1992 by the respondent authority, by a letter, which is produced before the learned Single Judge at Annexure 'B'. The petitioner, as such, had filed writ petition late. In such circumstances, it was, therefore, also mentioned in the writ petition that delay of almost 22 years in filing writ petition, has, undoubtedly, to be condoned. The learned Single Judge, while rejecting the writ petition, has alternatively also observed that the delay of 22 years in filing, has remained unexplained. This is one of the grounds on which the learned Single Judge refused to exercise powers under Article 226 of the Constitution of India. In our opinion, in a case like the one on hand, when the scheme is made by an employer, an employee who was working as Peon, and who belonged to Class IV service, and who was not communicated about the rights or the passing of the Resolution of the Government and the fact that after the rejection of the application by the respondent authority, the writ petition came to be filed after 22 years, if it is considered from the date of passing of Resolution. Well, to condone or to consider the period of delay in such a factual situation, is undoubtedly belong to the domain of the learned Single Judge and the number of days all the time could not be

characterized only as negative factor in exercising of the discretion or in condoning the delay. The ultimate anxiety of the Court, much less, the writ court, exercising extra ordinary prerogative or discretionary powers under Article 226 of the constitution is to see that the substantial justice is done and that no meritorious matter, like the one on hand, is thrown over-board, on technical ground of delay, latches etc. This proposition of law is very well examined, explained, propounded and expounded by host of the judicial pronouncement. Ordinarily, a long period of delay or latch would be an impediment and it would be open for the writ court to refuse exercise of discretionary powers in this behalf. However, the Court has to be loyal to the fact-situation in a given case. The main purpose and the design should be to see that the person who is done wrong for no fault of his, or a citizen of this country, who is done injustice, without any serious apathy, indifferenceness or actionable negligence, should not be deprived of constitutional remedy. Needless to reiterate that a person, who belongs to Class IV in the hierarchy of the employment and, who had put in more than the period of qualifying pensionable services, had to submit a letter of resignation at a time when there was no scheme or provision for voluntary retirement and benefit of the scheme emerging and arising out the Government Resolution dated 21.12.1971 in absence of any other material on record, could not be communicated to the beneficiary thereof, how could it be denied to him on the ground of unexplained delay or vice of apathy, or indifferenceness and more so, when the question is of grant of pensionary benefits, which are admittedly, not an act of charity or a mercy or grace but is the right of an employee ? Therefore, in our opinion, the respondent authority has totally wrongly approached the claim application for pensionary benefits made by the original petitioner and with due respect of seeking constitutional redressal by filing writ petition and rejection by the learned Single Judge upholding the view and the order of the Government, cannot be said to be just, reasonable, sustainable and, therefore, we are left with no alternative but to put the impugned order of the respondent authority manifested in its letter dated 24.2.1992, whereby, the pensionary benefits came to be denied and upheld by the learned Single Judge must be quashed and set aside and accordingly we set aside and quash the impugned order of the respondent dated 24.2.1992, and also of the learned Single Judge passed in the Special Civil Application No.9120/93.

14. At this juncture, the pertinent observations in

this behalf made by this Court in a Division Bench decision rendered in Kiritkumar D Vyas v. State of Gujarat (23(2) GLR 79) and particularly the observations made in par 9 are very significant, substantial and relevant for the purpose which undoubtedly reinforce the view which we are taking in this Letters Patent Appeal. The said observations are reproduced as under:

"There cannot be any blanket rule and as such there is none that a delay of a particular period should be considered to be unreasonable irrespective of the facts of a particular case. Unreasonable delay is a relative concept and what may be considered to be unreasonable delay in one case may not be so in the facts of a circumstance of another case. And we are fortified in our above inference by the observation of the Supreme Court in a case reported in AIR 1974 SC 259 (R S Deodhar v State of Maharashtra). In the said case, there was a delay of more than 10 to 12 years in filing the petition since the accrual of the cause of the complaint and it was contended by the Respondents in the said case as it was contended by Mr Shah before us that this unreasonable delay was sufficient to disentitle the petitioner to any relief in a petition under Article 32 of the Constitution. While repelling the said contention the Supreme Court observed :

"The Rule which says that a Court may not inquire into belated or stale claims is not a rule of law but a rule of practice based on sound and proper exercise of discretion, and there is no inviolable rule that whenever there is delay the Court must necessarily refuse to entertain the petition. The question is one of discretion to be followed on the facts of each case.

It may also be noted that the principle on which the court proceeds in refusing reliefs to the petitioner on ground of latches or delay is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless here was reasonable explanation for the delay. It may be noticed that the claim for enforcement of the fundamental right of equal opportunity under Article 16 is

itself a fundamental right guaranteed under Article 32 and this court which has been assigned the role of a sentinel on the qui vive for protection of the fundamental rights cannot easily allow itself to be persuaded to refuse relief solely on the jejune ground of laches, delay or the like."

15. The aforesaid observations and views are also succinctly supported by the following decision:

i. AIR 1970 SC 898 (Trilokchand Motichand v. H B Munshi)

We have, therefore, no hesitation in finding that the LPA on hand, is required to be allowed. However, the last but not the least, question which would come to surface for consideration is, as to how and from when the pensionary benefits to be accorded to the original petitioner as per the entitlement of the aforesaid G.R., in the factual scenario of the present case ? In this connection, we are required to mention that the original petitioner made an application for the first time to the

respondent authority on 18.11.1991, whereas, the entitlement under the GR could be from the date of tendering of resignation on 13.6.1971 and how to reckon with the spell of almost 20 years in between these two dates and whether, in the facts and circumstances, the original petitioner should be granted pensionary benefits during that period notionally and from the date 19.11.1991 till the date of his death. Again we may recall that the original petitioner, after filing this appeal, died on 14.6.2000 and thereafter, the family pension permissible under the rules, to which our answer on unambiguous ground should be as follows:

16. Before we articulate the final order in this penultimate para, let it be placed on record that the amount, if any, original petitioner-deceased peon, received towards contribution of Provident Fund of the master or the respondent authority, shall have to be deducted while finalising the actual amount of payment of pension. In absence of pensionary scheme, the contributory provident fund of the employer was in practice and, therefore, again in absence of any specific data and enlightenment of such an information to the court, we observe that such amount, if paid, shall have

to be deducted. Our attention is also drawn to the provisions made in the said G.R. in para 3 (iii), which enlightens that the amount of provident fund paid by the management of non-Government Secondary Schools, together with interest thereon standing at the credit of the member of teaching and non-teaching staff opting for pension scheme within the stipulated time from the date of issue of the Resolution, shall be credited to the State Government. Obviously, therefore, also, such an amount has to be adjusted while computing the amount due and payable under our order.

17. Before parting, again we would like to highlight the generous text made by the State of Gujarat in one of such earlier petitions in similar situation manifested in the order of the learned Single Judge in Special Civil Application No.1920/76, which reads as under:

> "When this writ petition reached for hearing, Mr A J Patel, learned Assistant Government Pleader, stated to the court, upon the previous objection with regard to the grant of pension to the petitioner under the Government Resolution dated December 21, 1971, (emphasis supplied) raised by the predecessor-in-office of the second respondent will be withdrawn and the pension papers of the petitioner will be forwarded to the Director of Treasuries and accounts within one month from today for the purpose of payment of pension. On this statement being made, Mr V B Patel, withdraws the petition. Rule discharged with no order as to costs."

We are also prompted and tempted to refer the observations of the Hon'ble Apex Court in the case of Committee of Management v. Director of Higher Education, Ahmedabad (1998(2)SLR 299). There it has been observed in the similar fact-situation. In that case, one Dr.Manju Saraswat has tendered his resignation voluntarily and till the date of the decision, she had not withdrawn such resignation. There was also no dispute about the fact that at the relevant time, the Managing Committee had accepted the said resignation and the said Managing Committee was in office both defacto and dejure by virtue of interim order passed by the High Court in the writ proceeding in favour of the Managing Committee. In the aforesaid circumstances, the High Court's view was held to be wrong in proceeding with the matter on the footing that the authorised controller had not accepted the resignation tendered by Smt.Manju

Saraswat because the authorised controller was not in office at the relevant time when the voluntary resignation was accepted by the Managing Committee which was lawfully discharging the duties and functions of the Managing Committee. Again it has been observed that if a teacher voluntarily tenders resignation and by that process withdraws from the service on own accord, the question of termination of service does not arise. In short, it has been lucidly expunged a proposition in a fact-situation like this and it has been held that if an employee voluntarily tenders resignation, it becomes an act of the employee who chooses to voluntarily give up job. There it was held that such situation will be covered by the expression voluntary retirement within the meaning of relevant rules and provisions. In short, the view which we have pursued and the proposition which we have hereinbefore set out, are also very much supported by the aforesaid decisions.

18. In the result, this LPA is allowed. The appellant-original petitioner will be entitled to the pensionary benefit pursuant to the Government Resolution dated 21.12.1971 from the date of tendering the letter of resignation dated 13.6.1971 till the date of death of the original petitioner which occurred on 14.6.2000 and the period between 13.6.1971 and the date on which the application was made i.e. 18.11.1991, will be considered for the purpose of pensionary benefits but there shall be no payment of pension during that period. After the death of the original petitioner , the permissible family pension, if available to the heirs brought on record or other heirs shall be examined by the respondent authority and the said point also shall be accordingly decided and the amount due and payable under the head of Family Pension shall also be paid. The amount of contributory provident fund of the Management or the master received from the respondent authority by the deceased original petitioner shall have to be adjusted from the amount due and payable under our order. Since we do not pass any order with regard to adjustment of that amount with interest, equity demands and commands that no interest shall also be paid on the arrears of amount of pensionary benefits till the date of death. In the peculiar facts and circumstances, non-passing of any order on payment of interest, refund or the amount due and payable, will be just and reasonable. However, we make it clear that the amount of interest can be awarded on the amount of delayed payment of gratuity but in the light of peculiar facts and circumstances, we do not deem it necessary to pass specific order of rate of interest on the amount to be adjusted as stated earlier and the amount due and

payable under our order. Since unfortunately, though it is pronounced policy of the Government that the first cheque of pension shall be paid on the last date of the service is yet to be translated into reality, and since in the factual situation of the present case, the unfortunate original petitioner whose life was also cut-short of the providence, without he could reap the fruits of the success of litigation initiated, much delay has occurred. Therefore, the respondent authority shall take urgent action and shall make payment due and payable under our order as expeditiously as possible but not later than June 30, 2001 and any delay, beyond that, shall be subject to payment of interest at the rate of 15% per annum.

19. Learned Advocate Mr Pandya for respondent No.3 has submitted that necessary case papers have already been submitted to the concerned authority. However, since much time has passed and the computation is required to be made in the light of record with respondent no.3, it is necessary to observe that in so far as the procedural part is concerned, we are told at this stage that the case papers for the pension with all the relevant materials and information shall have to be prepared and submitted by the Directorate of Pension and Provident Fund within a period of 4 weeks from the date of receipt of the writ of this court and thereafter, the Directorate of Pension and Provident Fund shall examine and finalise the said papers as expeditiously as possible but not later than two months from the date of reply of papers from respondent no.3.

This Letters Patent Appeal is partly allowed with costs.

26.12.2000 [J N Bhatt, J.]
msp.
[D P Buch, J.]